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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,833	10/30/2003	Cristiana Soldani	112701-587	7187

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BELL, BOYD & LLOYD LLP		
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EXAMINER
CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
1761	

NOTIFICATION DATE	DELIVERY MODE
09/04/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATENTS@BELLBOYD.COM

Office Action Summary

Application No.

10/695,833

Applicant(s)

SOLDANI, CRISTIANA

Examiner

Arthur L. Corbin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6 and 8-17 is/are pending in the application.
- 4a) Of the above claim(s) 13-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. Claims 1 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 is indefinite in failing to recite what is intended by "significant" hydrolysis (step ii) and by "improved" transparency (step iii). Claim 1 is further indefinite in not reciting to what "the water content" (step iii) refers. Also, there is no antecedent basis in claim 1 for "cooking" (step iii). Claim 3 is indefinite in not reciting when and to what the vacuum is applied. Corrections are required without new matter.

2. Claim 6 is objected to because of the following informalities: In claim 6, line 3, a comma should be added after "mass", and line 4, "down" should be cancelled.

Appropriate correction is required.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3-6 and 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rivier (EP 1 151 673 A2, cols. 13, 14 and 17-19). Rivier discloses preparing a confectionery product from a starting liquid composition including water, citric acid and sorbitol, maltitol, isomalt or a mixture of these polyols. The composition is cooked at 130 C under vacuum conditions and then cooled to form a plastic mass which is subsequently filled with a center filling. It would have been obvious that the

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cooking in Rivier evaporates water from the composition without causing significant hydrolysis of the polyol since said cooking is performed at a temperature as claimed by applicant. Further, finding the optimum water content and acid content of the confectionery product (claims 1, 11, 12) would require nothing more than routine experimentation by one reasonably skilled in this art. The use of a vacuum evaporator to apply a vacuum (claim 4) and multi-stage cooking (claims 5 and 6) are conventional in this art and in the absence of unexpected results are entitled to no patentable weight.

5. Claims 1, 3-6 and 8-12 are also rejected under 35 U.S.C. 103(a) as being unpatentable over Aldrich et al (4,154,867, col. 2) or Liebrand (3,738,845, cols. 1-2) in view of Rivier. Both primary references disclose preparing sugarless confections by cooking a composition including water, sorbitol and 0.2 % or 0.5 % citric or malic acid. The cooked composition is then cooled to form the final product. It would have been obvious to substitute isomalt or maltitol for the sorbitol in either primary reference and to perform the cooking therein under vacuum and at applicant's claimed temperature since it is well known to use sorbitol, isomalt and maltitol as alternative sweeteners in preparing confectionery products and to cook the confectionery composition under vacuum at a temperature of 130C, as evidenced by Rivier. Further, see the last three sentences in paragraph no. 4 above.

6. Claims 13-17 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or

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linking claim. Election was made **without** traverse in the reply filed on November 21 , 2005.

7. Applicant's arguments with respect to claims 1, 3-6 and 8-12 submitted November 3, 2006 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday-Friday from 10:30 AM to 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith D. Hendricks, can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'Arthur L. Corbin', with a large loop and a long horizontal stroke extending to the right.

Arthur L. Corbin
Primary Examiner
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8-28-07